

Senate File 2039 - Introduced

SENATE FILE 2039

BY PETERSEN

A BILL FOR

1 An Act relating to the limitations of criminal actions in
2 sexually motivated or exploitation offenses that involve
3 a minor, modifying the criminal offense for disseminating
4 obscene materials to minors, and providing penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 272.2, subsection 14, paragraph b,
2 subparagraph (1), subparagraph division (g), Code 2016, is
3 amended to read as follows:

4 (g) ~~Telephone~~ Using electronic communication device
5 dissemination of obscene material to minors under section
6 728.15.

7 Sec. 2. Section 692A.102, subsection 1, paragraph a,
8 subparagraph (10), subparagraph division (a), Code 2016, is
9 amended to read as follows:

10 (a) Dissemination or exhibition of obscene material to
11 minors in violation of [section 728.2](#) or ~~telephone dissemination~~
12 ~~of using electronic communication device to disseminate~~ obscene
13 material to minors in violation of [section 728.15](#).

14 Sec. 3. Section 728.15, Code 2016, is amended to read as
15 follows:

16 **728.15** ~~Telephone dissemination of~~ Using electronic
17 communication device to disseminate obscene material to minors.

18 1. ~~a.~~ As used in [this section](#), "person" unless the context
19 otherwise requires:

20 a. "Electronic communication device" means a telephone or
21 a mobile telephone or other electronic device used to move
22 information from one place to another.

23 b. "Person" excludes any information-access service provider
24 that merely provides transmission capacity without control over
25 the content of the transmission.

26 ~~b.~~ 2. A person shall not knowingly disseminate obscene
27 material by the use of ~~telephones or telephone facilities~~ an
28 electronic communication device to a minor.

29 ~~2.~~ 3. It shall be a defense in any prosecution for a
30 violation of [subsection 1 2](#) by a person accused of knowingly
31 disseminating obscene material by the use of ~~telephones~~ an
32 electronic communication device or telephone facilities to a
33 minor that the person accused has taken either of the following
34 measures to restrict access to the obscene material:

35 a. The person accused has done all of the following:

1 (1) Required the person receiving the obscene material to
2 use an authorized access or identification code, as provided by
3 the information provider, before transmission of the obscene
4 material begins.

5 (2) Previously issued the code by mailing it to the
6 applicant after taking reasonable measures to ascertain that
7 the applicant was eighteen years of age or older.

8 (3) Established a procedure to immediately cancel the
9 code of any person after receiving notice, in writing or by
10 ~~telephone~~ electronic communication device, that the code has
11 been lost, stolen, or used by persons under the age of eighteen
12 years or that the code is no longer desired.

13 b. The person accused has required payment by credit card
14 before transmission of the obscene material.

15 ~~3.~~ 4. Any list of applicants or recipients compiled or
16 maintained by an information-access service provider for
17 purposes of compliance with subsection 2 3 is confidential and
18 shall not be sold or otherwise disseminated except upon order
19 of the court.

20 ~~4.~~ 5. a. A violation of subsection 1 2 is an aggravated
21 misdemeanor.

22 b. A violation of subsection 1 2 by a person who has been
23 previously convicted of a violation of subsection 1 2 is a
24 class "D" felony.

25 Sec. 4. Section 802.2, subsection 1, Code 2016, is amended
26 to read as follows:

27 1. An information or indictment for sexual abuse in the
28 first, second, or third degree committed on or with a person
29 who is under the age of eighteen years shall be found within
30 ~~ten~~ twenty-five years after the person upon whom the offense
31 is committed attains eighteen years of age, or if the person
32 against whom the information or indictment is sought is
33 identified through the use of a DNA profile, an information or
34 indictment shall be found within three years from the date the
35 person is identified by the person's DNA profile, whichever is

1 later.

2 Sec. 5. Section 802.2B, subsection 6, Code 2016, is amended
3 by striking the subsection.

4 Sec. 6. NEW SECTION. **802.2C Sexually motivated offenses —**
5 **minors.**

6 An information or indictment for a violation of section
7 728.2 or 728.3, 728.5, subsection 1, paragraph "f", 728.5,
8 subsection 2, or section 728.12, 728.14, or 728.15 committed on
9 or with a person who is under the age of eighteen years shall be
10 found within twenty-five years after the person upon whom the
11 offense is committed attains eighteen years of age, or if the
12 person against whom the information or indictment is sought is
13 identified through the use of a DNA profile, an information or
14 indictment shall be found within three years from the date the
15 person is identified by the person's DNA profile, whichever is
16 later.

17 Sec. 7. Section 802.3, Code 2016, is amended to read as
18 follows:

19 **802.3 Felony — aggravated or serious misdemeanor.**

20 In all cases, except those enumerated in [section 802.1](#),
21 [802.2](#), [802.2A](#), [802.2B](#), [802.2C](#), or [802.10](#), an indictment or
22 information for a felony or aggravated or serious misdemeanor
23 shall be found within three years after its commission.

24 Sec. 8. Section 802.4, Code 2016, is amended to read as
25 follows:

26 **802.4 Simple misdemeanor — ordinance.**

27 A In all cases except for any case enumerated in section
28 802.2C, a prosecution for a simple misdemeanor or violation
29 of a municipal or county rule or ordinance shall be commenced
30 within one year after its commission.

31 Sec. 9. Section 802.10, subsection 3, Code 2016, is amended
32 to read as follows:

33 3. However, notwithstanding [subsection 2](#), an indictment
34 or information shall be found against a person within three
35 years from the date the person is identified by the person's

1 DNA profile. If the action involves sexual abuse or another
2 sexual offense, the indictment or information shall be found as
3 provided in section 802.2, ~~or 802.2B~~, or 802.2C, if the person
4 is identified by the person's DNA profile.

5

EXPLANATION

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The inclusion of this explanation does not constitute agreement with
7 the explanation's substance by the members of the general assembly.

8

This bill relates to the limitations of criminal actions
9 (statute of limitations) in sexually motivated or exploitation
10 offenses that involve a minor and modifies the criminal offense
11 for disseminating obscene materials to minors.

12 SEXUAL ABUSE. The bill amends Code section 802.2 by allowing
13 an indictment or information for sexual abuse in the first,
14 second, or third degree committed on or with a person under 18
15 years of age to be found within 25 years after the person upon
16 whom the offense is committed attains 18 years of age.

17 Current law provides that an indictment or information for
18 sexual abuse in the first, second, or third degree committed
19 on or with a person under 18 years of age shall be found within
20 10 years after the person upon whom the offense is committed
21 attains 18 years of age.

22 A person who commits sexual abuse in the first degree
23 commits a class "A" felony and is subject to a special sentence
24 under Code section 903B.1 for the rest of the person's life
25 if the person ever completes the sentence for the underlying
26 criminal offense. A person who commits sexual abuse in the
27 second degree commits a class "B" felony and is subject to
28 a special sentence under Code section 903B.1 for the rest of
29 the person's life upon completion of the sentence for the
30 underlying criminal offense. A person who commits sexual
31 abuse in the third degree commits a class "C" felony and is
32 subject to a special sentence under Code section 903B.1 for
33 the rest of the person's life upon completion of the sentence
34 for the underlying criminal offense. A person who commits any
35 sexual abuse offense must register as a sex offender under Code

1 section 692A.

2 SEXUALLY MOTIVATED OR EXPLOITATION OFFENSES. The bill
3 creates new Code section 802.2C which allows an information
4 or indictment for the following felony and aggravated and
5 serious misdemeanor offenses and one simple misdemeanor offense
6 committed on or with either a child under 14 years of age or a
7 person under 18 years of age to be found within 25 years after
8 the person upon whom the offense is committed attains 18 years
9 of age: dissemination and exhibition of obscene material to
10 minors in violation of Code section 728.2, admitting minors to
11 premises where obscene material is exhibited in violation of
12 Code section 728.3, public indecent exposure in violation of
13 Code section 728.5(1)(f) or 728.5(2), sexual exploitation of a
14 minor in violation of Code section 728.12, commercial film and
15 photographic print processor reports of depictions of minors
16 engaged in prohibited sexual acts in violation of Code section
17 728.14 (simple misdemeanor), and the criminal offense now known
18 as using an electronic communication device to disseminate
19 obscene material to minors in violation of Code section 728.15.

20 Current law provides that an indictment or information for
21 the offenses listed in the bill be found within three years
22 after its commission. However, under current law for sexual
23 exploitation of a minor in violation of Code section 728.12,
24 an indictment or information may be found 10 years after the
25 person upon whom the offense is committed attains 18 years of
26 age, and for depictions of minors engaged in prohibited acts in
27 violation of Code section 728.14, an information may be found
28 one year after the commission of the offense.

29 A person who commits dissemination and exhibition of obscene
30 material to minors commits a serious misdemeanor and must
31 register as a sex offender. A person who commits admitting
32 minors to premises where obscene material is exhibited commits
33 a serious or aggravated misdemeanor and must register as a
34 sex offender. A person who commits public indecent exposure
35 commits a serious or aggravated misdemeanor. A person who

1 commits sexual exploitation of a minor commits an aggravated
2 misdemeanor or a class "C" or class "D" felony depending on
3 the facts and circumstances of the case and must register
4 as a sex offender. A person who commits a felonious sexual
5 exploitation of a minor is also subject to a special sentence
6 under Code section 903B.1 for the rest of the person's life or
7 a special Code section 903B.2 for 10 years upon completion of
8 the sentence for the underlying criminal offense. A person
9 who commits commercial film and photographic print processor
10 reports of depictions of minors engaged in prohibited sexual
11 acts commits a simple misdemeanor. A person who commits
12 the criminal offense now known under the bill as using an
13 electronic communication device to disseminate obscene material
14 to minors commits an aggravated misdemeanor or class "D" felony
15 and must register as a sex offender.

16 DNA PROFILE. The bill also provides that if the person
17 against whom the information or indictment is sought is
18 identified through the use of a DNA profile for an offense
19 described in the bill, an information or indictment shall be
20 found within 25 years after the victim attains 18 years of age,
21 or within three years from the date the person is identified by
22 the person's DNA profile, whichever is later.

23 ELECTRONIC DISSEMINATION OF OBSCENE MATERIAL. The bill
24 also amends Code section 728.15 by striking references to
25 "telephone" and changing the name of the criminal offense
26 of "telephone dissemination of obscene material to minors"
27 to "using electronic communication device to disseminate
28 obscene material to minors". The bill defines "electronic
29 communication device" to mean a telephone or a mobile telephone
30 or other electronic device used to move information from one
31 place to another. The criminal penalty for a violation of
32 Code section 728.15 remains an aggravated misdemeanor or class
33 "D" felony depending on the facts and circumstances of the
34 violation.